



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER: AA/01179/2015  
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**THE IMMIGRATION ACTS**

**Heard at: Field House  
On 22nd February 2016**

**Decision and Reasons Promulgated  
on 14th April 2016**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**[N MA]**

**[A MA]**

**~~NO ANONYMITY DIRECTION MADE~~**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Ms C. Bexson, Counsel instructed by Abbey Law**

**For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The appellants are nationals of Algeria; they are respectively the mother – 'the appellant' - and her son, born on [ ] 1986 and [ ] 2014. They appeal with permission against the decision of the First-tier Tribunal Judge who dismissed their appeals against the respondent's decision dated 12 January 2015, to refuse to grant them asylum and to give directions for their removal. Their second names were spelled ['Me'] in the Judge's decision. However, I have relied on the documentation including that used by the respondent and by the appellant in her witness statement, where their names are spelled ['Ma'].
2. The appellant came to the UK on 19 January 2014 and claimed asylum on 19 July 2014.

3. The appellant claimed that she was of Berber origin. Her father is a strict disciplinarian, demanding that his children live according to strict moral codes. She was educated to college level and completed a certificate in accounting. She obtained employment in 2012 as a commercial representative.
4. She came to the UK on a visitor's visa. During her plane journey she met the father of her child, [H]. They arranged to meet in the UK. They commenced a sexual relationship after their arrival. On discovering that she was pregnant she moved to stay with a female friend. She claimed that her father has not spoken to her since he discovered that she was pregnant. There is regular contact with her sister and mother in Algeria.
5. She was currently staying with a friend of the child's father. He visits her from time to time. She fears that if returned to Algeria her father will kill her.
6. The Judge summarised the respondent's reasons for refusal at [3]. The respondent did not accept that she belonged to the Berber ethnic group. Nor was it accepted that her family, and in particular her father, was strict as she was growing up. It is inconsistent with her having been granted permission to travel to the UK alone. Moreover, she was allowed out of the house with female friends and attended colleges and worked in Algeria.
7. Her credibility was undermined as although she knew that she was pregnant in February 2014, she did not apply for asylum until July 2014. It is not accepted that she would not have known what procedures to follow with regard to asylum.
8. She will in any event be able to relocate to a place of safety in Algeria and would be beyond the reach of her father. The prospect of employment would be good. There are 15 women's centres in Algeria which would assist her as a single mother in relocating and re-establishing herself.
9. The background evidence showed that women do have freedom of movement in Algeria. She is 28 years old and has transferable skills and she would be able to re-establish herself in a place of safety away from the reach of her father with the assistance of the voluntary return programme.
10. The Judge set out the appellant's oral evidence at [4]. She stated that the decision to claim asylum was on the advice of her son's father. They went together to make the claim. He did not attend the hearing of the appeal. She did not ask him to do so. She does not know where he lives in the UK and is not aware of his immigration status.
11. It was her mother and sister who informed her of her father's threats against her. She has not spoken to her father directly on these matters.
12. The Judge was satisfied having regard to the evidence in its totality that the appellant's claim that she would be at risk of serious harm from her father for the reasons she stated, did not merit belief [5].
13. He set out his reasons at paragraph [5]. He noted that when the appellant realised she was pregnant in February 2014, she learned of her father's stance and the

danger he would pose to her if she were returned. She did not however take any action to claim asylum which was a factor undermining her credibility.

14. Moreover, her claim rested largely on the evidence that her father is a strict disciplinarian who would bring harm to her solely for the reason that she has had a child out of wedlock with a person who is married. She had not made any attempt at any stage to contact her father directly to speak to him about her predicament. She said that all she had done was hear from her mother and sister of her father's '... annoyance and threats of harm that would befall her at his hands if she were to return to Algeria' [5(ii)].
15. He was satisfied that even if her evidence were true, she would be able to relocate to a place of safety in Algeria beyond the reach of her father. She had worked there previously and had a good educational background. Her prospects of employment would be good. He noted the many women's centres in Algeria which would assist her as a single mother in relocating and re-establishing herself [6]. He dismissed the appeal on asylum grounds.
16. On 12 November 2015, Upper Tribunal Judge Bruce granted the appellant permission to appeal on the basis that it is arguable that in the brief determination there had been a failure to address the best interests of the second appellant, particularly in the context of the findings on internal flight. Permission was granted on all grounds.
17. In her submissions, Ms Bexson, who did not represent the appellant at the hearing before the First-tier Tribunal, submitted that it was of concern that there had been no consideration or findings relating to the best interests of the child. It was incumbent upon the Tribunal to consider those interests as a primary consideration. A key question was whether the child would be subjected to harm or ill treatment and how he would be received on return.
18. Ms Bexson referred to the appellant's witness statement produced at the hearing, in which she stated that she cannot return as a single mother. She would have no support and would be taunted, ridiculed and be in danger of her life. Her son's life would also be in danger as her family perceives him to be "a sinful object" and they do not accept him as an innocent child.
19. She recently visited the Algerian Embassy in London and was informed that her child is "not recognised by the Algerian government" as he was born when she was not married. There was a notice to this effect at the embassy as well.
20. Ms Bexson submitted that on that evidence, it appeared that the child would not have the benefit of Algerian nationality. This has been raised at an early stage. There had been no findings by the Judge relating to the child at all. The appellant had contended in her witness statement that her parents were angry when she disclosed that she was pregnant and threatened to kill her, stating that she had brought shame on the family. She was scared as her parents are serious about their religion and culture.
21. Ms Bexson accordingly submitted that there is a "clear error of law" having regard to the fact that the Judge did not consider the child's best interests at all. Moreover, the

Judge should have looked at the child's best interests, particularly in the context of internal flight.

22. On behalf of the respondent, Mr Tarlow relied on the Rule 24 response. The Judge did not accept the appellant's account for various reasons detailed in the determination. Nevertheless, he considered in the alternative that even if her account were true, she has the option to relocate internally.
23. As set out in the Rule 24 response, the child's best interests as a one year old are clearly to be with his mother and as an educated woman there would be no reason to suppose that there would be any significant detriment to the child on return. He also referred to the support noted at [6] that would be available to the appellant on return.
24. Mr Tarlow referred to the assistance available to women as set out at paragraph 35 of the reasons for refusal. There are a number of NGOs committed to women's rights. There is also a network of 15 women's centres where there are psychologists and lawyers to give advice and support. The Ciddef also helps mediate in conflicts with the women's families.
25. Mr Tarlow accepted that currently there appeared to be a need for more places than those available. The women's centres are consequently under resourced. He also accepted that it is not clear whether mothers can be admitted to such centres with small children.
26. In reply, Ms Bexson submitted that the findings by the Judge were "too brief." At the very least, notwithstanding any findings on credibility grounds, the Judge should have looked at the fact that the child was illegitimate and would return to a hostile environment.

### **Assessment**

27. The child was an appellant in the appeal. The evidence before the Judge, as set out in the appellant's witness statement, claimed that a person in her position would have no support and would be taunted and ridiculed and in danger of her life. It was also contended that her son's life would be in danger having regard to the fact that he is illegitimate and would not be treated as an infant.
28. More significantly, there was unchallenged evidence that the child would not be recognised by the Algerian authorities as he was born out of marriage. Accordingly, his status or otherwise as an Algerian was placed in issue but was not referred to or considered in assessing whether this would give rise to any significant problems if relocating.
29. Although the Judge considered the potential availability of assistance to women, including women's centres, where support can be given, there is, as fairly noted by Mr Tarlow, no indication that there would be support and shelter given to the appellant and her child.
30. The Judge in a very short paragraph found that the appellant would be able to relocate to a place of safety beyond the reach of her father [6]. He also states that the evidence shows that there were at least 15 women's centres in Algeria who would

assist her as a single mother in relocating. However, it is not apparent from the respondent's reasons for refusal that this would include an illegitimate child who is not recognised by the Algerian government. No consideration was given to any potential difficulties for the child on their return, and in particular the reaction of the community to the child of a lone single mother, who might have no status in Algeria.

31. Nor did the Judge did not consider the child's position in the context of the respondent's claim that the appellant could safely relocate. The Judge did not have regard to his best interests pursuant to s.55 of the 2009 Act, let alone considering his best interests as a primary consideration.
32. In the circumstances, I find that in his very brief determination, the Judge failed to address the best interests of the second appellant. The child's interests ought to have been carefully and fully considered in the light of the evidence relating to him as the child, born out of wedlock to a lone single mother, whose status in Algeria was unclear. Further, when considering his interests in the context of internal relocation the Judge should have had regard to the apparent lack of appropriate facilities or centres for a child in the position of the second appellant.
33. I accordingly find that the decision of the First-tier Tribunal Judge contained an error on a point of law. I accordingly set aside the decision, which will have to be re-made.
34. Ms Bexson submitted that having regard to the fact that the Judge had failed to consider the child's best interests under s.55 of the 2009 Act, that the appellant had not had a proper opportunity of having their claims considered in the light of the evidence that was available. Accordingly she submitted that this was an appropriate case to be remitted to the First-tier Tribunal. Mr Tarlow did not make any submissions in this respect.
35. I have had regard to the Senior President's Practice Statement regarding remitting an appeal to the First-tier Tribunal for a fresh decision. In giving effect to the approach, I am satisfied that the effect of the error has been to deprive the appellants before the First-tier Tribunal of a fair hearing or opportunity for their case properly to be put to and considered by the First-tier Tribunal.
36. The appeal is accordingly remitted to the First-tier Tribunal (at Taylor House) for a fresh decision to be made.

### **Notice of Decision**

Having found that there was a material error of law in the First-tier Tribunal's decision I set it aside and direct that the appeal be remitted to the First-tier Tribunal, Taylor House, for a fresh decision to be made before another Judge.

No anonymity direction is made.

Signed

Date 4 April 2016

Deputy Upper Tribunal Judge Mailer